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[Home](#) > Memorandum of Decision Re: Validity of Deeds of Trust

Thursday, July 30, 1987

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re

JOHN and CARMEN HASSOLD,

No. 1-83-00574

Debtors.

_____ /

CHARLES DUCK, [Trustee](#) ,

[Plaintiff](#) ,

v.

A.P. No. 1-86-0188

DONALD L. NURISSO, et al.,

Defendants.

_____ /

Memorandum of Decision

The essential facts in this matter are fairly simple and completely undisputed. In 1981,

[debtor](#) John Hassold was a general contractor. He was introduced by a relative to Edward Bergman, a developer. They developed a business relationship and Bergman promised Hassold that he would be the general contractor on a project Bergman was developing called Fairway Vista Condominiums. The cash needed to fund the project was coming from Donald Nurisso, the [defendant](#) here. Nurisso was to be a joint venturer in the project with Three Gates Development, Inc., a corporation controlled by Bergman. The written agreement between Nurisso and Three Gates required Nurisso to purchase a portion of the real property for development. It provided that Nurisso would have the option to be bought out by Three Gates for specified amounts depending on when the option was exercised. Before Nurisso agreed to put up the \$111,500.00 necessary to purchase the land, he demanded security. Bergman talked Hassold into putting up three of his parcels of real property as security for Nurisso in order to get Nurisso to fund the project. Bergman obtained the pledge of the properties from Hassold by promising him that he would be the general contractor for the project and that the properties would be released in a few months. Hassold and his wife signed three deeds of trust in favor of Nurisso. The only evidence as to the purpose of the deeds of trust is the typed statement in each that it is given as "security for performance of obligation [sic] of Agreement for Development of 'Fairway Vista Condominiums'." In 1982, the parties agreed that Hassold could sell the three parcels and substitute three other parcels as security. No work was ever done on the project. The land was eventually lost to foreclosure, and Nurisso's investment was wiped out. Three Gates defaulted on its obligation to buy Nurisso out. One of the three substituted properties was lost to foreclosure, and the other two have been sold. This action concerns the proceeds of those two sales. By the time the Trustee commenced this action, the statute of limitations under [Bankruptcy Code](#) section 546(a) had expired, leaving the Trustee without any avoiding powers. The sole issue before this court is therefore whether or not the deeds of trust are void under state law. The Trustee must step into the shoes of the debtor, and can have the deeds of trust declared to be void only if prior to the bankruptcy the debtor could have done so. 11 U.S.C. sec. 541(a)(1); 4 **Collier on Bankruptcy** (15th ed.), para. 541.06. While deeds of trust are commonly used to secure obligations arising under promissory notes, under California law they may secure any sort of contractual obligation. Cal.Civ.Code secs. 2872, 2920; Stub v. Belmont (1942) 20 Cal.2d 208. Further, there is no requirement that the trustor be the debtor. As one California authority describes the law:

If Ann gives a deed of trust to a lender to secure Bob's promissory note, Ann is a trustor but Bob is the debtor. If the note is not paid, Ann may lose her property by foreclosure, but she has no obligation to pay the note if the foreclosure proceeds do not [discharge](#) the entire debt.

California Mortgage and Deed of Trust Practice (CEB 1979), pp.20-21, citing Garretson Inv. Co. v. Arndt (1904) 144 Cal. 64 and Carson v. Reid (1902) 137 Cal. 253. Since a deed of trust is not void merely because it secures another's obligation, the only possible argument the Trustee could have against the validity of the deeds of trust here is that the obligation they secure cannot be liquidated. *Id.* However, the contract does specify the exact buy-out amount, and this is the obligation Nurisso alleges has been breached. If the statute of limitations had not run, the interesting issue in this case would have been whether the promise of getting the general contractor's job was sufficient consideration to keep the deeds of trust from being avoided as fraudulent transfers. Since it is too late to raise that issue, there appears to be no basis for the Trustee's attack on the validity of the deeds of trust. Judgment shall therefore be entered in favor of Nurisso, who shall also recover his costs of suit. This memorandum shall constitute findings and conclusions pursuant to FRCP 52(a)

and Bankruptcy Rule 7052. Counsel for defendant shall prepare and submit an appropriate form of judgment.

Dated: July 30, 1987

ALAN JAROSLOVSKY

U.S. [BANKRUPTCY JUDGE](#) 

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